

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KEVIN M. LARGE, on behalf of plaintiff
and the class named herein,

Plaintiff,

vs.

LVNV FUNDING LLC, RESURGENT
CAPITAL SERVICES, L.P.; ALEGIS
GROUP LLC; and PLAINS COMMERCE
BANK,

Defendants.

No.: 1:09-CV-689-JTN

Judge Janet T. Neff

**DEFENDANTS LVNV FUNDING LLC, RESURGENT CAPITAL SERVICES, L.P.,
AND ALEGIS GROUP LLC'S MOTION TO DISMISS**

Defendants LVNV FUNDING LLC ("LVNV"), RESURGENT CAPITAL SERVICES, L.P. ("Resurgent"), and ALEGIS GROUP LLC ("Alegis") (collectively "these Defendants"), by their undersigned attorneys, move pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss this action for failure to state a claim upon which relief can be granted. In support of this Motion, these Defendants state as follows:

1. Plaintiff purports to bring a claim under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.* Specifically, Plaintiff alleges that the Defendants devised a so-called refinancing program whereby a debtor could transfer his or her non-performing account balance to a newly issued credit card.

2. Plaintiff and other consumers were allegedly informed of this program by means of a document attached to Plaintiff's Complaint as Exhibit A. Plaintiff alleges that this exhibit does not comply with the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.* ("TILA") and Regulation Z, 12 C.F.R. § 226 ("Reg. Z"). Exhibit A allegedly was false and fraudulent because

it failed to include a description of an alleged prepaid finance charge. Plaintiff alleges a violation of the FDCPA.

3. Plaintiff fails to state a claim upon which relief can be granted. These Defendants are not subject to TILA. Plaintiff does not allege that these Defendants are creditors under that statute or facts plausibly supporting that they are card issuers as defined in Regulation Z, 12 U.S.C. § 226.2(a)(7). Moreover, there was no TILA violation. Exhibit A met TILA's disclosure requirements and is not false or fraudulent. Further, the Plaintiff fails to allege facts plausibly supporting his conclusion that there was an undisclosed finance charge. Moreover, full disclosure of all finance charges was not required for Exhibit A. Exhibit A contained all the disclosures required. In any event, there was no finance or other charge to disclose. Furthermore, Plaintiff did not sign up, or pay, for anything. Plaintiff is not entitled to statutory damages under TILA, suffered no actual damages and lacks standing to bring a TILA claim.

4. Plaintiff fails to state any claim under the FDCPA on separate grounds. Plaintiff's FDCPA claim fails to the extent that his allegations of false and fraudulent credit terms are premised on TILA. Plaintiff has not alleged that these Defendants are creditors or facts plausibly supporting that they are card issuers under TILA. Moreover, there was no violation of TILA or Regulation Z, and Plaintiff lacks standing to bring a TILA claim. Plaintiff is, in effect, trying to impose additional disclosure requirements under TILA than are actually required, by pleading his case under the FDCPA. This Plaintiff validly cannot do.

5. Furthermore, the Complaint does not state a FDCPA claim because any alleged TILA violation was not false or fraudulent.

6. Finally, Plaintiff's allegations of a false or misleading statement fail for lack of materiality.

7. In further support of this Motion, these Defendants, along with Defendant Plains Commerce Bank, are filing a single joint Memorandum.

WHEREFORE, Defendants LVNV FUNDING LLC, RESURGENT CAPITAL SERVICES, L.P. and ALEGIS GROUP LLC pray that the Court enter judgment in their favor and against Plaintiff, dismiss the Complaint and this action with prejudice, award these Defendants their reasonable attorneys' fees and costs to the extent allowed by law, and award these Defendants such other and further relief as the Court considers proper.

Date of Signing: November 9, 2009

Respectfully Submitted,

LVNV FUNDING, LLC, RESURGENT
CAPITAL SERVICES, L.P., and ALEGIS
GROUP LLC, Defendants

By: s/Clifford E. Yuknis

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